



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 18, 1991

Mr. Jeff Hankins
Program Division, Legal Services 110-1C
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR91-512

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13697.

You have received a request for information relating to an investigation of Employer's Underwriters, Inc. You claim that the requested information is excepted from required public disclosure by sections 3(a)(3) and 3(a)(11) of the Open Records Act.

Previous open records decisions issued by this office resolve your request. Open Records Decision No. 555 (1990) held that the section 3(a)(3) exception is applicable when litigation is pending or may be reasonably anticipated and if the requested information relates to that litigation. Section 3(a)(3) forces parties to a lawsuit to obtain relevant information through the normal process of discovery. Open Records Decision No. 551 (1990) at 4. The litigation exception may be applied to records relating to a contested case before an administrative agency. Open Records Decision No. 368 (1983).

You advise us that your department is currently conducting an investigation of Employer's Underwriters, Inc. for possible violations of state insurance laws and that "[i]t is anticipated that the investigation will culminate in litigation" involving the department. On that basis, we conclude that litigation may be reasonably anticipated. Having examined the records submitted to us for review, we further

conclude that the requested information relates to that litigation. Unless the information has been previously disclosed through the discovery process or by court order, it may be withheld from required public disclosure by section 3(a)(3) of the Open Records Act. Please note that this ruling applies only for the duration of the litigation and only for the information at issue here. *See* Open Records Decision No. 551 at 5. Because we resolve your request under section 3(a)(3), we need not address the applicability of section 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-512.

Yours very truly,

A handwritten signature in black ink, appearing to read "Mary R. Crouter". The signature is fluid and cursive, with the first name "Mary" being the most prominent.

Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lcd

Ref.: ID# 13697, 13876

cc: Ms. Linda Krol
Houston SPA & Deck, Inc.
10001 Westheimer
Houston, Texas 77042